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BELLSOUTH

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February 9, 2006

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: *Generic Proceeding to Examine Issues Related to BellSouth's Obligations to Provide Unbundled Network Elements*; Docket No. 19341-U
Docket No. 2004-316-C

Dear Mr. Terreni:

On January 26, 2006, the Staff of the Florida Public Service Commission issued its recommendation on all issues pending in the parallel change of law docket resulting from the Federal Communications Commission's *Triennial Review Remand Order*. That recommendation, which is voluminous, is available at the following website: **http://www.psc.state.fl.us/library//FILINGS/06/00786-06/00786-06.PDF**

On February 7, 2006, the Florida Public Service Commission ("Florida Commission") voted to adopt this recommendation in whole, with the exception of the Staff's recommendation on Issue 13, Commingling. Enclosed for your review is a copy of the Florida Commission's vote sheet on all issues.

On Issue 13, Commingling, the Florida Commission declined to adopt Staff's recommendation that BellSouth be required to permit a requesting carrier to commingle certain facilities and services. Instead, the Florida Commission rejected Staff's position on this issue and ordered that BellSouth not be obligated to permit a carrier to commingle certain services and facilities, including those available to CLECs under §271 of the Telecommunications Act of 1996 ("the Act") with elements available under §251 of the Act.

Regarding Issue 7 relative to §271 jurisdiction, the Florida Staff concluded that the Florida "Commission does not have authority to require BellSouth to include in §252 interconnection agreements §271 elements." Florida Staff Recommendation, p. 78. The

Florida Staff reasoned that "although such a finding by this Commission may arguably have a negative impact on CLECs business plans in the short term, staff firmly believes that in the long term, a Commission finding that BellSouth is not required to include §271 elements in §252 interconnection agreements, will further bolster the FCC's stated policy of encouraging strong facility-based competitors." Florida Staff Recommendation, p. 77. Likewise, because the Florida Staff found improper the CLECs request that it order BellSouth to include §271 elements in §252 agreements, it concluded that the CLECs' request that it set rates for these §271 elements was moot. As noted above, the Florida Commission voted to adopt this recommendation and thereby rejected the CLECs' position that state commissions have authority under the federal act to require §271 elements be included in §252 agreements.

Additionally, by letter dated January 30, 2006, BellSouth informed the Commission that the Georgia Commission had recently entered an order addressing the Section 271 issues involved in this docket and that BellSouth has appealed that decision to the federal district court in Georgia. Earlier this week, the Georgia Commission voted on the remaining issues in its Change of Law docket. A written order is not yet available, and BellSouth is still reviewing the details of the Motion the Georgia Commission adopted, but it appears that the Georgia Commission adopted BellSouth's position on some issues, adopted CompSouth's positions on some issues, and decided other issues in a way that is not entirely consistent with either BellSouth's or CompSouth's positions.

As explained in the attached letter that BellSouth filed with the Federal Communications Commission ("FCC"), at least three recent decisions of the Georgia Commission have misinterpreted the federal act and have been overturned by the federal courts or preempted by the FCC. BellSouth respectfully submits that several aspects of the two Georgia Commission decisions described above likewise contravene federal law. The Florida Commission's decision, on the other hand, is well-reasoned and legally sustainable, and BellSouth respectfully submits that the Commission should give it considerable weight in deciding the issues before it in this docket.

Finally, the Commission has ordered that "the transition of the embedded base of existing customers . . . shall occur with alacrity" and that the transition must take place "prior to the FCC's absolute deadline of March 10, 2006 . . . ."[1] Despite the clarity of this directive, some carriers have taken little or no action to effectuate this transition in the months since that Order was issued. BellSouth, therefore, respectfully requests that the

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[1] *See* Order Addressing Petition for Emergency Relief, *In Re: Petition of BellSouth 'Telecommunications, Inc. to Establish a Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Order No. 2005-247 in Docket No. 2004-316-C at p. 3, 6-7, 10 (August 1, 2005).

Commission adopt BellSouth's position on each of the issues in this docket as quickly as possible.

Thank you for your assistance in this matter.

Sincerely,

Patrick W. Turner

PWT/nml
Enclosures
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FLORIDA PUBLIC SERVICE COMMISSION

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VOTE SHEET

FEBRUARY 7, 2006

RE: **Docket No. 041269-TP** - Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.

Issue 1: What is the appropriate language to implement the FCC's transition plan for
(1) switching,
(2) high capacity loops and
(3) dedicated transport as detailed in the FCC's Triennial Review Remand Order ("TRRO"), issued February 4, 2005?

Recommendation: Staff recommends that the embedded base as used in the TRRO relates to de-listed UNE arrangements existing on March 11, 2005. Staff recommends that the TRRO transition rates be based on the higher of the rate the CLEC paid for that element or combination of elements on June 15, 2004, or the rate the Commission ordered for that element or combination of elements between June 16, 2004, and March 11, 2005, plus the applicable additive (one dollar for local circuit switching and 15 percent for high-capacity loops and transport and dark fiber). Accordingly, the transition rate for DS0 level capacity switching for customers subject to the four or more line carve-out is the rate in existing contracts. Additionally, staff recommends that the TRRO transitional rates for the de-listed UNEs are effective at the time of the ICA amendment and subject to true-up back to March 11, 2005; the TRO new unbundling obligations should be effective with the ICA amendment.

APPROVED

COMMISSIONERS ASSIGNED: Edgar, Deason, Arriaga

COMMISSIONERS' SIGNATURES

MAJORITY	DISSENTING
	5 (7a) 13

REMARKS/DISSENTING COMMENTS:

Commissioner Arriaga dissented on Issues 7(a) and 13.

PSC/CCA033-C (Rev 12/01)

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Consistent with the Commission's finding in the Verizon Arbitration Order, staff recommends that regardless of when CLECs submit their conversion orders during the transition period, the TRRO rules entitle them to receive the transitional rates for the full 12 months, March 11, 2005 - March 10, 2006, for local circuit switching, high-capacity loops and transport, and 18 months, March 11, 2005 - September 10, 2006, for dark fiber loops and transport. However, transitional pricing ends March 10, 2006, and September 10, 2006, for the affected de-listed arrangements, whether or not the former UNEs have been converted.

With regard to the transition period process, staff recommends that (1) CLECs are required to submit conversion orders for the affected de-listed arrangements by the end of the transition period, but conversions do not have to be completed by the end of the applicable transition period (March 10, 2006, for local circuit switching and affected high-capacity loops and transport and September 10, 2006, for dark fiber loops and transport); and (2) there should not be a required date for CLECs to identify the respective embedded bases of the de-listed UNEs. However, if CLECs do not identify the applicable embedded bases by March 10, 2006, and by September 10, 2006, respectively, staff recommends that BellSouth should be permitted to (1) identify the arrangements itself, (2) charge CLECs the applicable disconnect charges and full installation charges, and (3) charge CLECs the resale or wholesale tariffed rate beginning March 11, 2006, for local circuit switching and affected high-capacity loops and transport (September 11, 2006, for dark fiber loops and transport), regardless of when the conversion is completed.

Staff also recommends that BellSouth's proposed "switch-as-is" conversion rates not be approved due to the lack of competent evidence. However, BellSouth is not precluded from initiating a cost proceeding later to address "switch-as-is" conversion rates.

Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that parts of the language proposed by BellSouth and CompSouth should be combined and adopted as discussed in the analysis portion of its memorandum. Staff's recommended language is found in Appendix A of staff's memorandum.

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Issue 2: a. How should existing ICAs be modified to address BellSouth's obligation to provide network elements that the FCC has found are no longer Section 251(c) (3) obligations?

b. What is the appropriate way to implement in new agreements pending in arbitration any modifications to BellSouth's obligations to provide network elements that are no longer Section 251(c) (3) obligations?

Recommendation: a) The TRRO has changed BellSouth's obligation to provide unbundled network elements pursuant to its §251(c)(3) obligation. Therefore, staff recommends that existing ICAs should be amended to reflect those changes to BellSouth's obligations. b) Amendments to new ICAs pending arbitration should be based on the Commission's decisions in this proceeding, unless the parties have specifically agreed otherwise. Accordingly, staff believes that all Florida CLECs having ICAs with BellSouth should be bound by the decisions in this proceeding effective upon issuance of the final order.

APPROVED

Issue 3: What is the appropriate language to implement BellSouth's obligation to provide Section 251 unbundled access to high capacity loops and dedicated transport and how should the following terms be defined?

(i) Business Line
(ii) Fiber-Based Collocation
(iii) Building
(iv) Route

Recommendation: A business line should include all business UNE-P lines and all UNE-L lines, as well as HDSL-capable loops at full capacity. Fiber-based collocation should be based on the number of fiber-based collocators present in a wire-center at the time the count is made. The definition of a building should be based on a "reasonable telecom person" approach such that a multi-tenant building with multiple telecom entry points will be considered multiple buildings for purposes of DS1/DS3 caps. The FCC's definition of a route is appropriate. Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that parts of the language proposed by BellSouth and CompSouth should be combined and adopted as discussed in the staff analysis. Staff's recommended language is found in Appendix A of its memorandum.

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Issue 4: a. Does the Commission have the authority to determine whether or not BellSouth's application of the FCC's Section 251 non-impairment criteria for high-capacity loops and transport is appropriate?
b. What procedures should be used to identify those wire centers that satisfy the FCC's Section 251 non-impairment criteria for high-capacity loops and transport?
c. What language should be included in agreements to reflect the procedures identified in (b)?

Recommendation: Staff believes this Commission has authority to resolve an ILEC's challenges to a CLEC self-certification, under an ICA's dispute resolution process. This Commission should also approve the initial wire center lists as requested by the parties. CLECs should exercise due diligence in making inquiries about the availability of UNEs and must self-certify that they are entitled to the UNE. BellSouth should provision such UNEs, but may bring disputes to this Commission for resolution in accordance with the TRRO. Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that parts of the language proposed by BellSouth and CompSouth should be combined and adopted as discussed in the staff analysis. Staff's recommended language is found in Appendix A of its memorandum.

APPROVED

Issue 5: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?

Recommendation: Staff recommends that:

- High Bit Rate Digital Subscriber (HDSL)-capable loops (i.e., BellSouth's 2-wire or 4-wire High Bit Rate Digital Subscriber Compatible Loop offering) are the equivalent of DS1 loops for the purpose of evaluating impairment and should be counted as 24 voice grade equivalents.
- BellSouth is obligated to provide CLECs with access to copper loops and to condition copper loops upon request; however, BellSouth is not obligated to offer pre-conditioned/pre-packaged loop offerings designed for a specific service type.
- An Unbundled Copper Loop Non-Designed (with or without conditioning) should be counted as one voice grade equivalent for each 2-wire (e.g., one voice grade equivalent for a 2-wire loop and two voice grade equivalents for a 4-wire loop).

Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth in Exhibit 17, with the modifications discussed in the analysis portion of staff's January 26, 2006 memorandum, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

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Issue 7(a): Does the Commission have the authority to require BellSouth to include in its interconnection agreements entered into pursuant to Section 252, network elements under either state law, or pursuant to Section 271 or any other federal law other than Section 251?
Recommendation: No. Staff believes that the Commission does not have authority to require BellSouth to include in §252 interconnection agreements §271 elements. The inclusion of §271 elements in a §252 agreement would be contrary to both the plain language of §§251 and 252 and the regulatory regime set forth by the FCC in the TRO and the TRRO.

APPROVED Commissioner Arriaga dissented on the bases stated by the Commissioner at the conference.

Issue 7(b): If the answer to part (a) is affirmative in any respect, does the Commission have the authority to establish rates for such elements?
Recommendation: If the Commission approves staff's recommendation in Issue 7(a), this issue is moot.

MOOT

Issue 7(c): If the answer to part (a) or (b) is affirmative in any respect, (i) what language, if any, should be included in the ICA with regard to the rates for such elements, and (ii) what language, if any, should be included in the ICA with regard to the terms and conditions for such elements?
Recommendation: If the Commission approves staff's recommendation in Issues 7(a) and/or (b), this issue is moot. If the Commission denies staff's recommendation in Issue(s) 7(a) and/or (b), staff recommends the Commission approve the Joint CLECs' proposed language pending a further proceeding to determine permanent rates which meet the standards set forth in §§201 and 202.

MOOT

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Issue 8: What conditions, if any, should be imposed on moving, adding, or changing orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport, and what is the appropriate language to implement such conditions, if any?
Recommendation: Staff recommends that moving or adding orders to a CLEC's respective embedded bases of switching, high-capacity loops and dedicated transport are not allowed. However, changes to an existing service, such as adding or removing vertical features, are permitted during the applicable transition period. Staff recommends that no language is needed to effectuate this policy.

APPROVED

Issue 9: What rates, terms, and conditions should govern the transition of existing network elements that BellSouth is no longer obligated to provide as Section 251 UNEs to non-Section 251 network elements and other services and

a. what is the proper treatment for such network elements at the end of the transition period; and
b. what is the appropriate transition period, and what are the appropriate rates, terms and conditions during such transition period, for unbundled high capacity loops, high capacity transport, and dark fiber transport in and between wire centers that do not meet the FCC's non-impairment standards at this time, but that meet such standards in the future?

Recommendation:
(a) Transition of UNEs de-listed in the TRO

If a CLEC has any de-listed TRO elements or arrangements in place after the effective date of the change-of-law amendment, staff recommends that BellSouth should be authorized to disconnect or convert such services, after a 30-day written notice and absent a CLEC disconnection or conversion order. If CLECs submit the requisite orders during the 30-day period, staff recommends that conversions be subject to Commission-approved switch-as-is rates. If CLECs do not submit the requisite orders during the 30-day period, staff recommends that BellSouth should be allowed to transition such circuits to equivalent BellSouth tariffed services and impose full nonrecurring charges as set forth in BellSouth tariffs.

Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with the modifications discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

(b) Subsequent Transition Period

- Staff recommends that BellSouth should identify and post on its website subsequent wire centers meeting the non-impairment criteria set forth in the TRRO (Subsequent Wire Center List) in a Carrier Notification Letter (CNL).
- Staff recommends that CLECs have 30 calendar days following the CNL to dispute a non-impaired wire center claim. During the 30 days, rates for de-listed UNEs (DS1 and DS3 loops and transport and dark fiber transport) do not change.

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- 30 calendar days after the CNL, staff recommends that BellSouth no longer has an obligation to provide unbundling of new de-listed UNEs, as applicable, in the wire centers listed on the Subsequent Wire Center List. If a CLEC disputes a specific non-impaired wire center claim with a UNE order within 30 calendar days following the CNL, BellSouth will provision the CLEC's ordered UNE. BellSouth will review the CLEC claim and will seek dispute resolution if needed. During the dispute resolution period, the applicable UNE rates will not change unless ordered by the Commission. Upon the Commission's resolution of the dispute, the rates will be trued up, if necessary, to the time BellSouth provisioned the CLEC's order.
- Staff recommends that the Subsequent Transition Period for DS1 and DS3 loops and transport in a wire center identified on the Subsequent Wire Center List is 180 calendar days and begins on day 30 following issuance of the CNL; the Subsequent Transition Period for dark fiber transport is 270 calendar days beginning on day 30 following issuance of the CNL.
- Staff recommends that the Subsequent Transition Period applies to the Subsequent Embedded Base (all de-listed UNE arrangements in service in a wire center identified on the Subsequent Wire Center List on the thirtieth day following issuance of the CNL).
- Staff recommends that the transition rates to apply to the Subsequent Embedded Base throughout the Subsequent Transition Period should be the rate paid for that element at the time of the CNL posting, plus 15 percent.
- Staff recommends that CLECs be required to submit spreadsheets identifying the Subsequent Embedded Base of circuits to be disconnected or converted to other BellSouth services no later than the end of the Subsequent Transition Period (210 days following the CNL for DS1 and DS3 loops and transport and 300 days following the CNL for dark fiber transport). A project schedule for the conversion of these affected circuits will be negotiated between the parties.
- For the Subsequent Embedded Base circuits identified by the end of 210 days for DS1 and DS3 high-capacity loops and transport (300 days for dark fiber transport) following the CNL, BellSouth should convert the applicable circuits at Commission-approved switch-as-is rates and UNE disconnect charges do not apply. The applicable recurring tariff charges will apply beginning on the first day following the end of the Subsequent Transition Period.

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- If CLECs do not submit the spreadsheets for all of their Subsequent Embedded Base by the end of the Subsequent Transition Period, staff recommends that BellSouth be permitted to identify the remaining Subsequent Embedded Base and transition the circuits to the equivalent BellSouth tariffed services. Additionally, the circuits identified and transitioned by BellSouth should be subject to the applicable UNE disconnect charges and the full non-recurring charges for installation of the BellSouth equivalent tariffed service.
- For the Subsequent Embedded Base circuits, staff recommends that the applicable recurring tariff charges should apply beginning on the first day following the end of the Subsequent Transition Period, whether or not the circuits have been converted.

Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with the modifications discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

APPROVED

Issue 10: What rates, terms and conditions, if any, should apply to UNEs that are not converted on or before March 11, 2006, and what impact, if any, should the conduct of the parties have upon the determination of the applicable rates, terms and conditions that apply in such circumstances?
Recommendation: The staff recommendation addressing this issue is included in the recommendation for Issue 1. Therefore, if the staff recommendation in Issue 1 is approved, this issue is moot.

APPROVED

Issue 12: Should network elements de-listed under Section 251(c)(3) be removed from the SQM/PMAP/SEEM?
Recommendation: Yes. Performance data for services (de-listed elements) no longer under Section 251(c)(3) should be removed from BellSouth's SQM/PMAP/SEEM. Staff believes that the language proposed by BellSouth, with the modification discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

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Issue 13: What is the scope of commingling allowed under the FCC's rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?
Recommendation: Staff recommends that: (1) BellSouth is required to permit a requesting telecommunications carrier to commingle a UNE or a UNE combination with one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under §251(c)(3) of the Act, unless otherwise specifically prohibited; (2) BellSouth is not required to commingle UNEs or combinations of UNEs with another carrier; and (3) multiplexing in a commingled circuit should be billed from the same agreement or tariff as the higher bandwidth circuit. Staff believes that neither the language proposed by BellSouth nor the Joint CLECs is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with the modifications discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

DENIED Commissioner Arriaga dissented.

Issue 14: Is BellSouth required to provide conversion of special access circuits to UNE pricing, and, if so, at what rates, terms and conditions and during what timeframe should such new requests for such conversions be effectuated?
Recommendation: Staff recommends that BellSouth is obligated to provide conversions of special access to UNE pricing. Staff defers recommendation of the rates for conversions to Issue 1. Staff believes that the language proposed by BellSouth best implements this recommended decision and should be adopted. The recommended language is found in Appendix A of staff's memorandum.

APPROVED

Issue 15: What are the appropriate rates, terms, conditions and effective dates, if any, for conversion requests that were pending on the effective date of the TRO?
Recommendation: Staff recommends that any conversions to stand-alone UNEs pending on the effective date of the TRO should be effective with the date of an amendment or interconnection agreement that incorporates conversions. Since neither party proposed or contested language as part of this issue, staff created its own language to cover this issue.

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Issue 16: Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?
Recommendation: Staff recommends that BellSouth is not obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004. The recommended language for this issue is addressed in Issue 17.

APPROVED

Issue 17: If the answer to foregoing issue is negative, what is the appropriate language for transitioning off a CLEC's existing line sharing arrangements?
Recommendation: Staff believes that neither the language proposed by CompSouth nor BellSouth is totally appropriate to implement the recommended decision in Issue 16. Instead the language proposed by BellSouth in Exhibit 12, with modifications discussed in the staff analysis, should be adopted. The recommended language is found in Appendix A of staff's memorandum.

APPROVED

Issue 18: What is the appropriate ICA language to implement BellSouth's obligations with regard to line splitting?
Recommendation: Staff's recommended language is based on the following three points:
1. BellSouth's obligation with regard to line splitting is to provide nondiscriminatory access to operations support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.
2. The CLEC requesting a line splitting arrangement should purchase the whole loop and provide its own splitter to be collocated in the central office.
3. The CLEC requesting a line splitting arrangement should indemnify, defend and hold BellSouth harmless against any and all claims, loss or damage except where arising from or in connection with BellSouth's gross negligence or willful misconduct.

Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with modifications discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

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Issue 21: What is the appropriate ICA language, if any, to address access to call related databases?
Recommendation: BellSouth is obligated to offer all CLECs unbundled access to the 911 and E911 call-related databases. For CLECs with existing agreements with BellSouth as of March 11, 2005, BellSouth is obligated to offer unbundled access to all other call related databases through March 10, 2006.

Staff believes that neither the language proposed by BellSouth nor the Joint CLECs is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with the modification discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

APPROVED

Issue 22: a) What is the appropriate definition of minimum point of entry ("MPOE")?
b) What is the appropriate language to implement BellSouth's obligation, if any, to offer unbundled access to newly deployed or "greenfield" fiber loops, including fiber loops deployed to the minimum point of entry ("MPOE") of a multiple dwelling unit that is predominantly residential, and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?

Recommendation: a) Since no party has proposed language for a definition of MPOE within the contract, staff too concludes that no language is required.
b) BellSouth is required to unbundle FTTH/FTTC loops to predominantly commercial MDUs, but has no obligation to unbundle such fiber loops to residential MDUs. While the FCC's rules provide that FTTH/FTTC loops serving end user customer premises do not have to be unbundled, CLEC access to unbundled DS1 and DS3 loops was also preserved. Accordingly, in wire centers in which a non-impairment finding for DS1 or DS3 loops has not been made, BellSouth is obligated upon request to unbundle a FTTH/FTTC loop to provide a DS1 or DS3 loop. Staff believes that no party's language is completely appropriate. Staff's recommended language is found in Appendix A of its memorandum.

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Issue 23: What is the appropriate ICA language to implement BellSouth's obligation to provide unbundled access to hybrid loops?
Recommendation: Staff recommends BellSouth be required to provide the CLEC with nondiscriminatory access to the time division multiplexing features, functions and capabilities of a hybrid loop, including DS1 and DS3 capacity under Section 251 where impairment exists, on an unbundled basis to establish a complete transmission path between BellSouth's central office and an end user's premises. Staff believes that the language proposed by BellSouth best implements this recommended decision and should be adopted. The recommended language is found in Appendix A of staff's memorandum.

APPROVED

Issue 25: What is the appropriate ICA language to implement BellSouth's obligation to provide routine network modifications?
Recommendation: BellSouth should provide the same routine network modifications and line conditioning that it normally provides for its own customers. Staff believes that neither the language proposed by BellSouth, CompSouth nor Sprint is totally appropriate to implement this recommended decision. Instead, staff believes that parts of the language proposed by BellSouth, CompSouth, and Sprint should be combined and adopted as discussed in the staff analysis. Staff's recommended language is found in Appendix A its memorandum.

APPROVED

Issue 26: What is the appropriate process for establishing a rate, if any, to allow for the cost of a routine network modification that is not already recovered in Commission-approved recurring or nonrecurring rates? What is the appropriate language, if any, to incorporate into the ICAs?
Recommendation: BellSouth should use the rates approved by this Commission in the UNE Order. If any additional rates are needed, BellSouth should petition this Commission to establish those rates. Staff believes that neither the language proposed by BellSouth, CompSouth nor Sprint is totally appropriate to implement this recommended decision. Instead, staff believes that parts of the language proposed by BellSouth, CompSouth, and Sprint should be combined and adopted as discussed in the staff analysis. Staff's recommended language is found in Appendix A of its memorandum.

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Issue 27: What is the appropriate language, if any, to address access to overbuild deployments of fiber to the home and fiber to the curb facilities?
Recommendation: The unbundling requirements of an incumbent carrier with respect to overbuilt FTTH/FTTC loops are limited to either a 64 Kbps transmission path over the FTTH loop or unbundled access to a copper loop. Staff believes that the language proposed by BellSouth best implements this recommendation, with minor modifications as discussed in the staff analysis, and should be adopted. The recommended language is found in Appendix A of staff's memorandum.

APPROVED

Issue 28: What is the appropriate ICA language to implement BellSouth's EEL audit rights, if any, under the TRO?
Recommendation: BellSouth need not identify the specific circuits that are to be audited or provide additional detailed documentation prior to an audit of a CLEC's EELs. The audit should be performed by an independent, third-party auditor selected by BellSouth. The audit should be performed according to the standards of the American Institute of Certified Public Accountants (AICPA). The CLEC may dispute any portion of the audit following the dispute resolution procedures contained in the interconnection agreement after the audit is complete. Staff believes that neither the language proposed by BellSouth nor CompSouth is totally appropriate to implement this recommended decision. Instead, staff believes that the language proposed by BellSouth, with the modifications discussed in the staff analysis, should be adopted. Staff's recommended language is found in Appendix A of its memorandum.

APPROVED

Issue 30: What language should be used to incorporate the FCC's ISP Remand Core Forbearance Order into interconnection agreements?
Recommendation: Staff recommends that while the Commission should make it clear that all affected CLECs are entitled to amend their agreements to implement the ISP Remand Core Forbearance Order, such amendments should be handled on a carrier-by-carrier basis. Accordingly, no language is necessary for this issue.

APPROVED

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(Continued from previous page)

Issue 31: How should the determinations made in this proceeding be incorporated into existing Section 252 interconnection agreements?
Recommendation: In accordance with the Commission's ruling in Order No. PSC-05-0639-PCO-TP, issued in this docket, staff believes that parties and non-parties should be bound to the amendments arising from the Commission's determinations in this proceeding. For non-parties, staff recommends that the resulting amendments be limited to the disputed issues in this proceeding and not affect language unrelated to the disputed issues in this proceeding. Staff recommends that it may be appropriate given the FCC's transitional deadlines to order the parties to file their respective amendments or agreements within 20 days of the decisions in this proceeding. Staff believes that this would allow the parties sufficient time to comply with the Commission's decisions in this proceeding and meet the March 11, 2006 deadline. In addition, staff requests that the Commission grant it administrative authority to approve any amendments and agreements filed in accordance with the Commission's decisions in this proceeding.

APPROVED

Issue 32: Should this docket be closed?
Recommendation: No. The parties should be required to submit signed amendments or agreements that comply with the Commission's decisions in this docket for approval within 20 days of the Commission's decisions in this proceeding. This docket should remain open pending Commission approval of the final arbitration agreements in accordance with §252 of the Telecommunications Act of 1996.

APPROVED

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February 1, 2006

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *BellSouth Telecommunications, Inc's. Emergency Petition for Declaratory Ruling and Preemption of State Action,* WC Docket No. 04-245

Dear Ms. Dortch:

BellSouth Telecommunications, Inc. ("BellSouth") submits this response to a recent ex parte by the Competitive Carriers of the South, Inc. ("CompSouth"), which purports "to bring to the Commission's attention recent developments regarding the subject of BellSouth's petition ...."[1] These "recent developments," which are selective in nature, consist of the October 2005 order of the Tennessee Regulatory Authority ("Authority") memorializing the Authority's decision that is the subject of BellSouth's petition, a November 2005 decision by a Maine federal district court, and a recent order by the Georgia Public Service Commission.

The three decisions referenced in CompSouth's ex parte contravene federal law. They erroneously find that state public service commissions have authority to establish rates for elements provided under section 271 of the Telecommunications Act of 1996 ("1996 Act") that are not required to be unbundled under section 251, even though such an interpretation cannot be squared with the plain language of the 1996 Act or the Commission's *Triennial Review Order.*[2] These decisions also are inconsistent with the overwhelming majority of courts and commissions that have addressed this issue. By BellSouth's count, and as reflected in Appendix 1, there have been at least twenty-two federal court and state public service commission decisions finding that

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[1] Ex Parte Letter from Henry Walker, Counsel for CompSouth, to Marlene Dortch, Secretary, FCC (Jan. 23, 2006) ("*CompSouth Ex Parte*").

[2] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 664 (2003) ("*Triennial Review Order*"), *vacated in part and remanded, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir.) ("*USTA II*"), *cert. denied* 125 S. Ct. 313, 316 (2004).

state commissions have no authority to regulate non-section 251 elements. For example, the Indiana Utility Regulatory Commission recently issued an order rejecting the position espoused in CompSouth's ex parte, noting that it was joining "the many courts and commissions that have already held that Section 271 obligations have no place in Section 251/252 interconnection agreement[s] and that state commissions have no jurisdiction to enforce or determine requirements of Section 271."[3] CompSouth notably fails to inform the Commission about such decisions, which plainly belie its argument that BellSouth's preemption petition "has no legal basis."[4]

Aside from the fact that the Maine, Georgia, and Tennessee decisions are contrary to the great weight of federal court authority and the decisions of most state commissions, they lack persuasive reasoning. For instance, although the Maine court asserted that state commissions can set rates for purposes of section 271, it cited no federal-law grant of such authority. Instead, the court concluded that *state-law* authority to set rates for purposes of section 271 is not "pre-empted" by section 271.[5] The Tennessee Regulatory Authority made a similar mistake, claiming that "there is no language contained in the [1996 Act] that expressly prohibits state jurisdiction over Section 271 elements ...."[6] But section 271 is a provision of *federal* law, and states have no presumed or inherent authority to implement federal law.[7] As the Eighth Circuit has explained in language equally applicable here, "[t]he new regime [under the 1996 Act] for regulating competition is federal in nature . . . and while Congress has chosen to retain a significant role for the state commissions, *the scope of that role is measured by federal, not state, law.*"[8]

The correct result is thus the one reached by other federal courts, including those in Mississippi and Kentucky. Those courts have explained that "[i]t is the prerogative of the FCC ... to address any alleged failure by [a Bell company] to satisfy any statutorily imposed conditions

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[3] Order, *In re: Indiana Utility Regulatory Commission's Investigations and Issues Related to the Implementation of the Federal Communications Commission's Triennial Review Remand Order and the Remaining Portons of the Triennial Review Order*, Cause No. 42857 (Ind. URC Jan. 11, 2006). As the Texas Public Service Commission correctly held, the 1996 Act "provides no specific authorization for the [state public service commissions] to arbitrate Section 271 issues; Section 271 only gives states a consulting role in the 271 application/approval process." Arbitration Order, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Texas P.U.C. Docket No. 28821* (Tex. PUC June 17, 2004). Or, as the Rhode Island Public Service Commission put it more colorfully, "... at the bistro serving up the [Bell Operating Companies'] wholesale obligations, the kitchen door numbered 271 is for 'federal employees only.'" Docket No. 3662, *In re: Verizon-Rhode Island's Filing of February 18, 2005 to Amend Tariff No. 18* (R.I. PSC July 28, 2005).

[4] *CompSouth Ex Parte*, at 6.

[5] *Verizon New England, Inc. v. Maine PUC*, No. 05-53-B-C, slip op. at 10 (D. Me. Nov. 30, 2005).

[6] Final Order of Arbitration Award, *In re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. With BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996,* Docket No. 03-00119 (TRA Oct. 20, 2005).

[7] *See, e.g., AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999).

[8] *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 1114, 1127 (8th Cir. 2000) (emphasis added).

to its continued provision of long distance service,"[9] and thus that "[t]he enforcement authority for § 271 unbundling duties lies with the FCC and must be challenged there first."[10]

Similarly, the Georgia Public Service Commission decision contravenes federal law by purporting to impose unbundling requirements under section 271, which it claims authorizes it both to require BellSouth to include access to non-section 251 network elements in section 251 interconnection agreements and to set "just and reasonable rates" for such access. Contrary to the Georgia Commission's conclusion, it has no authority whatsoever to implement section 271, and its order does not even purport to cite any subsection of that provision granting such authority. On the contrary, the statute makes clear that only the Commission may enforce section 271 and that state commissions are limited to a purely advisory role.[11] The Georgia Public Service Commission's decision is thus directly contrary to federal law.

Furthermore, the Georgia Commission's order indicates its intention to conduct "an expedited hearing" to set "just and reasonable rates for de-listed UNEs pursuant to Section 271." In determining whether it had the authority to do so, the Georgia Commission did not acknowledge, much less address, the fact that the only provision of federal law authorizing state commissions to set rates under the 1996 Act expressly limits such ratesetting authority to determining rates for "purposes" of section 251, not section 271.[12] Thus, even if the Georgia Commission had some authority under section 271 (which is not the case), Congress plainly withheld from state commissions ratesetting authority for purposes of that section.[13]

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[9] *BellSouth Telecomms., Inc. v. Mississippi Public Serv. Comm'n*, 368 F. Supp. 2d 557, 566 (S.D. Miss. 2005),

[10] *BellSouth Telecomms., Inc. v. Cinergy Communications Co.*, No. 03:05-CV-16-JMH, slip op. at 12 (E.D. Ky. Apr. 22, 2005).

[11] *See* 47 U.S.C. § 271(d)(2)(B).

[12] *See* 47 U.S.C. § 252(d).

[13] The Georgia Commission's erroneous reading of section 271 is not the first time it has misinterpreted the 1996 Act. For example, a 2003 decision by the Georgia Commission establishing rates for unbundled network elements was overturned as being arbitrary and capricious and in violation of the 1996 Act. *See* Order, *BellSouth Telecomms., Inc. v. Georgia Pub. Serv. Comm'n.*, No. 03-CV-3222-CC (N.D. Ga. Apr. 6, 2004), *aff'd* 400 F.3d 1268 (11th Cir. 2005). More recently, the Georgia Commission ordered BellSouth to continue allowing competing local exchange carriers ("CLECs") to order the UNE-P in Georgia indefinitely for as long as CLECs could drag out proceedings to amend their existing interconnection agreements. A federal district court preliminarily enjoined that order, and that injunction was upheld by the Eleventh Circuit. *BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, LLC*, No. 1:05-CV-0674-CC, 2005 WL 807062 (N.D. Ga. April 5, 2005), *aff'd* 425 F.3d 964 (11th Cir. 2005). Likewise, this Commission preempted a decision of the Georgia Commission (and other state commissions) requiring BellSouth to provide DSL service to an end user customer over the same unbundled loop leased by a CLEC, finding that such a requirement was inconsistent with the Commission's unbundling rules and ran afoul of the appropriate state role in implementing unbundling policies under the 1996 Act. *See* Memorandum Opinion and Order and Notice of Inquiry, *In re: BellSouth Telecommunications, Inc. Request for Declaratory Ruling That State Commissions May Not Regulate Broadband Internet Access Services By Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*, WC Docket No. 03-251 (FCC March 25, 2005). The Georgia Commission's recent decision interpreting section 271 is only its latest that contravenes federal law, and BellSouth has filed a complaint in federal court seeking judicial relief. *See BellSouth Telecommunications, Inc. v. Georgia Public Service Comm'n,* Civil Action No. 1-06-CV-0162 (N.D. Ga. filed Jan. 24, 2006).

Although the Maine, Georgia, and Tennessee decisions represent the minority view, they are by no means the only orders that have erroneously interpreted a state commission's authority under section 271.[14] Consequently, the Commission should promptly grant BellSouth's Petition, which would provide valuable guidance to state public service commissions conducting generic proceedings to implement the *Triennial Review Remand Order*[15] and that are confronting requests from various CLECs for state commission-mandated rates for network elements that are not required to be unbundled under section 251 under the guise of section 271.[16] Granting BellSouth's Petition also would put an end to unwarranted representations by CLECs that the Commission has tacitly endorsed the view that state public service commissions have the authority to set rates for elements not required to be unbundled under section 251.[17]

As the Commission repeatedly has found, "competition is the most effective means of ensuring that the charges, practices, classifications, and regulations ... are just and reasonable, and not unjust and unreasonably discriminatory."[18] And, in the specific context of network elements that need not be unbundled, the Commission has concluded that the "market price should prevail," "as opposed to a regulated rate" of the type that these state commissions are considering.[19] Simply put, in this context, meaningful competitive alternatives necessarily exist. As a result, parties seeking to negotiate a commercial agreement to govern access to such elements and services should be able to do so without the overhang of state public service commission involvement. Accordingly, the Commission should grant BellSouth's Petition and find that state commissions have no authority to establish rates for network elements not required to be unbundled under section 251.

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[14] *See, e.g.*, Order, *Collaborative Proceeding To Monitor and Facilitate Implementation of Accessible Letters Issued by SBC Michigan and Verizon*, Case No. U-14447 (Mich. PSC Sept. 20, 2005) (noting that the Michigan Public Service Commission "is still convinced that obligations under Section 271 should be included in interconnection agreements approved pursuant to Section 252"); Arbitration Order, *Southwestern Bell Tel.'s Petition for Compulsory Arbitration of Unresolved Issues*, Case No. TO-2005-0336 (Mo. PSC July 11, 2005) (noting Missouri Public Service Commission's agreement that an interconnection agreement "must include prices for § 271 UNEs").

[15] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("*Triennial Review Remand Order*" or "*TRRO*"), *petitions for review pending, Covad Communications Co., et al. v. FCC, et al.*, Nos. 05-1095, *et al.* (D.C. Cir., to be argued Feb. 24, 2006).

[16] *See* Ex Parte Letter from Glenn Reynolds, Vice President – Regulatory, BellSouth, to Marlene Dortch, Secretary, FCC (June 10, 2005).

[17] For instance, in proceedings before the U.S. District Court for the Eastern District of Missouri, a coalition of CLECs noted that BellSouth's Petition had been on the Commission's docket for 15 months and opined that "[n]othing the FCC has done on the BellSouth petition indicates the FCC is troubled by the TRA's assertion of authority to establish rates, terms and conditions for § 271 checklist items." Memorandum of the Coalition Defendants in Opposition to SBC Missouri's Opposition to Summary Judgment, *Southwestern Bell Tel. v. Missouri Pub. Serv. Comm'n*, Case No. 4:05-cv-01264-CAS, at 17 (E.D. Mo. filed Nov. 30, 2005).

[18] *Petition of US West Communications, Inc. for Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of US West for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, 14 FCC Rcd 16252, ¶ 31 (1999).

[19] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, 3906, ¶ 473 (1999).

Please include a copy of this letter in the record in the above-referenced proceeding. Thank you for your attention to this matter.

Sincerely,

Bennett L. Ross

BLR:dlr
Enclosure

cc: Dan Gonzalez
Michelle Carey
Ian Dilner
Jessica Rosenworcel
Scott Bergmann
Sam Feder
Tom Navin

#619718

APPENDIX 1

Decisions Finding No State Jurisdiction over Section 271 Elements

STATE	Date Ordered	271 Ruling on Commercial Agreements
Alabama	05/25/2005	"[T]he ultimate enforcement authority with respect to a regional Bell operating company's alleged failure to meet the continuing requirements of § 271 of the Telecommunications Act of 1996 rests with the FCC and not this Commission." *Order Dissolving Temporary Standstill And Granting In Part And Denying In Part Petitions For Emergency Relief*, Alabama Public Service Commission Docket No. 29393 (May 25, 2005).
Arkansas	10/31/2005	"[T]his Opinion will not attempt to resolve Section 271 issues because they are not subject to arbitration under Section 252 of the Act." The Commission recognized that "ICA arbitrations are limited to establishing the rates, terms and conditions to implement the obligations of 47 U.S.C. 251." It explained that "[t]his Commission's obligations under Section 271 of the Act are merely advisory to the FCC." *Memorandum Opinion and Order,* October 31, 2005, *In re: Petition of Southwestern Bell Telephone L.P. d/b/a SBC Arkansas for Compulsory Arbitration of Unresolved Issues for Successor Interconnection Agreement to the Arkansas 271 Agreement,* Docket No. 05-081-U.
District of Columbia	12/15/2005	"[T]here is no requirement that section 271 network elements be addressed in interconnection agreements negotiated and arbitrated pursuant to section 252." The Commission made clear that its authority does not extend to requiring "inclusion of section 271 network elements in interconnection agreements." Order, December 15, 2005, *Petition of Verizon Washington, D.C. , Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996,* TAC 19, Order No. 13836, 2005 D.C. PUC LEXIS 257.
Idaho	07/18/2005	"[T]he Commission does not have the authority under Section 251 or Section 271 of the Act to order the Section 271 unbundling obligations as part of an interconnection agreement." Order No. 29825; *2005 Ida. PUC LEXIS* 139.
Illinois	11/2/2005	"The Commission rejects CLECs' proposal to update underlying agreements requiring SBC to provide new rates, terms, and conditions for Section 271 elements, apart from any terms agreed to in the underlying agreement." Illinois Commerce Commission Docket No. 05-0442, *Arbitration Decision*, November 2, 2005,

Indiana	01/11/2006	Joined "the many courts and commissions that have already held that Section 271 obligations have no place in Section 251/252 interconnection agreement[s] and that state commissions have no jurisdiction to enforce or determine the requirements of Section 271." Order, January 11, 2006, *In Re: Indiana Utility Regulatory Commission's Investigation of Issues Related to the Implementation of the Federal Communications Commissions' Triennial Review Remand Order and the Remaining Portions of the Triennial Review Order,* Cause No. 42857.
Iowa	05/24/2005	Concluded it lacked "jurisdiction or authority to require that Qwest include [Section 271] elements in an interconnection agreement arbitration brought pursuant to § 252." *In re: Petition for Arbitration of Covad with Qwest,* Iowa Utilities Board, Docket No. ARB-05-1 (May 24, 2005), *2005 Iowa PUC LEXIS 186.*
Kansas	07/18/2005	"The FCC has preemptive jurisdiction over 271 matters." *Order No. 15: Commission Order on Phase II UNE Issues*, Docket Nos. 05-BTKT-365-ARB et al., 2005 Kan. PUC LEXIS 867 (July 18, 2005).
Kentucky – U. S. District Court	04/22/2005	"While the defendants also argue that the Act places independent obligations for ILECs to provide unbundling services pursuant to § 271, this Court is not the proper forum to address this issue in the first instance. The enforcement authority for § 271 unbundling duties lies with the FCC and must be challenged there first." *BellSouth Telecommunications, Inc. v. Cinergy Communications Co., et al.,* Civil Action No. 3:05-CV-16-JMH, *Memorandum Opinion and Order,* (E.D. Ky. Apr. 22, 2004).
Maryland	04/08/2005	"With respect to whether Section 271 provides an independent basis for continued provisioning of switching . . . at TELRIC rates, the Commission notes that Verizon's fulfillment of its Section 271 obligations do not necessitate the provision of Section 251 elements at Section 251 rates." *In re: Petition of AT&T Comm. of Maryland, Inc. and TCG Maryland for an Order Preserving Local Exchange Market Stability,* Order No. 79893, Case No. 9026, 2005 Md. PSC LEXIS 11 (Apr. 8, 2005).

Massachusetts	07/14/2005	"[O]ur authority to review and approve interconnection agreements under § 252 does not include the authority to mandate that Verizon include § 271 network elements in any of its § 252 interconnection agreements." *In re: Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts for Arbitration of Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order,* D.T.E. 04-33, Arbitration Order (July 14, 2005).
Minnesota	03/14/2005	"There is no legal authority in the Act, the *TRO,* or in state law that would require the inclusion of section 271 terms in the interconnection agreement over Qwest's objection . . . both the Act and the *TRO* make it clear that state commissions are charged with the arbitration of section 251 obligations, whereas the FCC has retained authority to determine the scope of access obligations pursuant to section 271." *Order Resolving Arbitration Issues*, Docket No. P-5692, 421/IC-04-549 (March 14, 2005) *(adopting December 16, 2004 Arbitrator's Report).*
Mississippi - U. S. District Court	04/13/2005	"Even if § 271 imposed an obligation to provide unbundled switching independent of § 251 with which BellSouth had failed to comply, § 271 explicitly places enforcement authority with the FCC. . . ." *BellSouth Telecommunications, Inc. v. Mississippi Public Serv. Com'n. et al.*, Civil Action No. 3:05CV173LN, *Memorandum Opinion and Order* (S.D. Miss. Apr. 13, 2005) *2005 U.S. Dist. LEXIS 8498.*
Montana – U.S. District Court	06/09/2006	Section 252 did not authorize a state commission to approve an agreement containing elements or services that are not mandated by Section 251. *Qwest Corp. v. Schneider, et al.*, 2005 U.S. Dist. LEXIS 17110, CV-04-053-H-CSO, at 14 (D. Mont. June 9, 2005).
Ohio	11/09/2005	"Although SBC's obligations under Section 271 are not necessarily relieved based on the FCC's § 251 unbundling analysis, these obligations should be addressed in the context of carrier-to-carrier agreements, and not § 252 interconnection agreements, inasmuch as the components will not be purchased as network elements." Arbitration Order, Case No. 05-0887-TP-UNC.

Oregon	09/06/2005	"Every state within the Qwest operating region that has examined [the Section 271] issue has done so in a thoughtful, thorough and well-reasoned manner. In each case, the agency with the authority to review the Covad/Qwest ICA dispute has found that there is no legal authority requiring the inclusion of Section 271 UNEs in an interconnection agreement subject to arbitration under Section 251 of the Act, and [the Oregon Commission] adopt[s] the legal conclusions that they all hold in common ...." *In re: Petition for Arbitration of Covad with Qwest,* Oregon Public Utility Commission, Order No. 05-980, ARB 584 (Sept. 6, 2005), *2005 Ore. PUC LEXIS 445.*
Pennsylvania	06/10/2005	"[T]he enforcement responsibilities of Section 271 compliance lies with the FCC. Therefore, the Commission will not oblige Verizon PA to produce tariff amendments that reflect its Section 271 obligations . . . ." *Pennsylvania Public Utility Commission v. Verizon Pennsylvania Inc., et al;* R-00049524; R-00049525; R-00050319; R-00050319C0001; Docket No. P-00042092, 2005 Pa. PUC LEXIS 9 (June 10, 2005).
Rhode Island	07/28/2005	"At this time, it is apparent to the Commission that at the bistro serving up the BOCs' wholesale obligations, the kitchen door numbered 271 is for 'federal employees only.'" Docket No. 3662, *In re: Verizon-Rhode Island's Filing of February 18, 2005 to Amend Tariff No. 18* (July 28, 2005).
South Dakota	07/26/2005	The Commission "does not have the authority to enforce Section 271 requirements within this section 252 arbitration. Section 252(a) provides that interconnection negotiations are limited to requests for interconnection, services, or network elements pursuant to section 251 . . . . In addition, . . . section 252(c)(1) requires the Commission to ensure that [its] resolution of open issues 'meet the requirements of section 251 of this title, including the regulations prescribed by the FCC pursuant to section 251 of this title . . . .' The language in these sections clearly anticipates that section 252 arbitrations will concern section 251 requirements, not section 271 requirements." *In re: Petition for Arbitration of Covad with Qwest,* South Dakota Public Service Commission Docket No. TC05-056 (July 26, 2005), *2005 S.D. PUC LEXIS 137.*

Texas	06/17/2005	"decline[d] to include terms and conditions for provisioning of UNEs under FTA § 271 in this ICA. The Commission finds that the FTA provides no specific authorization for the Commission to arbitrate Section 271 issues; Section 271 only gives states a consulting role in the 271 application/approval process." Arbitration Order, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Texas P.U.C. Docket No. 28821* (June 17, 2004).
Utah	02/08/2005	"Section 252 was clearly intended to provide mechanisms for parties to arrive at interconnection agreements governing access to the network elements required under Section 251. Neither Section 251 nor 252 refers in any way to Section 271 or state law requirements, and certainly neither section anticipates the addition of new Section 251 obligations via incorporation by reference to access obligations under Section 271 or state law." *In re: Petition for Arbitration of Covad with Qwest,* Utah Public Service Commission Docket No. 04-2277-02 (Feb. 8, 2005), *2005 Utah PUC LEXIS 16.*
Washington	02/09/2005	Holding that, because "[t]he FCC has the exclusive authority to act under Section 271," state commissions "ha[ve] no authority under Section 252 or Section 271 of the Act to require inclusion of Section 271 unbundling obligations in the parties' interconnection agreements," and "[a]n order requiring [such] inclusion . . . would conflict with the federal regulatory scheme." *Washington Covad/Qwest Decision,* 2005 Wash. UTC LEXIS *38

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth's letter dated February 9, 2006 in Docket No. 2004-316-C to be served upon the following this February 9, 2006.

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